

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 In the matter of:

9 DAVID LEE MCMILLAN and POLLY P.
10 MCMILLAN, husband and wife
11 CRD#1808333

12 Respondents.

) DOCKET NO. S-20452A-06-0218

) **NOTICE OF OPPORTUNITY FOR HEARING**
) **REGARDING PROPOSED ORDER TO**
) **CEASE AND DESIST, FOR RESTITUTION,**
) **FOR ADMINISTRATIVE PENALTIES, OF**
) **REVOCATION, AND FOR OTHER**
) **AFFIRMATIVE ACTION**

13 **NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

14 **EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

15 The Securities Division (“Division”) of the Arizona Corporation Commission
16 (“Commission”) alleges that respondent DAVID LEE MCMILLAN (“MCMILLAN”) has
17 engaged in acts and practices that constitute violations of AR.S. § 44-1801, *et seq.*, the Arizona
18 Securities Act (“Securities Act”).

19 **I.**

20 **JURISDICTION**

21 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
22 Arizona Constitution and the Securities Act.

23 **II.**

24 **RESPONDENTS**

25 2. MCMILLAN, whose last known address is 217 Riverfront Drive, Bullhead City,
26 Arizona 86442, is and was at all pertinent times a registered securities salesman in Arizona, since on
 or about April 19, 1988, CRD# 1808333. At all times pertinent to this action, MCMILLAN was
 registered in Arizona in association with registered securities dealer Royal Alliance Associates, Inc.

1 (“Royal”) from November 14, 1994 to December 31, 2004, and with registered securities dealer
2 Geneos Wealth Management, Inc. (“Geneos”) from January 14, 2005 to October 18, 2005. On
3 October 18, 2005, Geneos discharged MCMILLAN for cause after an internal investigation
4 following multiple phone calls to the firm from individuals claiming to have invested with
5 MCMILLAN in an undisclosed outside business activity. MCMILLAN is currently not affiliated
6 with any securities dealer. At all pertinent times, MCMILLAN was also licensed as a “producer”
7 with the Arizona Department of Insurance. MCMILLAN’s insurance license expired on September
8 30, 2005.

9 3. POLLY P. MCMILLAN, whose last known address is 233 Riverfront Drive,
10 Bullhead City, Arizona 86442, was at all relevant times the spouse of MCMILLAN. POLLY P.
11 MCMILLAN is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining
12 the liability of the marital community.

13 4. At all pertinent times, MCMILLAN and POLLY P. MCMILLAN were acting for
14 their own benefit, and for the benefit or in furtherance of the marital community.

15 5. MCMILLAN may be referred to as “Respondent.” POLLY P. MCMILLAN may be
16 referred to as “Respondent Spouse.”

17 III.

18 FACTS

19 6. Beginning in around 1999 through 2005, MCMILLAN offered and sold various
20 securities in the form of investment contracts to customers of his securities dealers, including non-
21 existent first trust deeds, certificates of deposit, variable annuities, and loans for development
22 projects. MCMILLAN told investors that they would receive profits in the form of interest
23 payments.

24 7. At all pertinent times, MCMILLAN was associated as a registered securities
25 salesman with Schooner Financial Associates, Inc. (“Schooner”), an Arizona-licensed investment
26 adviser, located in Phoenix, Arizona. The Schooner office in Phoenix was at all pertinent times an

1 office of supervisory jurisdiction (“OSJ”) for Royal and Geneos, providing supervision for
2 MCMILLAN, who operated from a non-OSJ satellite office of Royal and Geneos, located at 3003
3 Highway 95, Suite 102, Bullhead City, Arizona 86442.

4 8. MCMILLAN misrepresented to certain customers of Schooner/Royal and Geneos
5 that their money would be invested in various securities, including the following:

6 a) Certificates of deposit and/or interest-bearing annuities through a company
7 called “Transnation,” purportedly located in Phoenix, Arizona. MCMILLAN sent investors
8 monthly statements which he prepared on fraudulent “Transnation” letterhead. In fact,
9 Transnation Title Insurance Company, which is located at the same address that
10 MCMILLAN used on the fraudulent account statements, had no knowledge or relationship
11 with MCMILLAN and had no dealings in certificates of deposit or annuities.

12 b) First deeds of trust secured by real property through Ramsey Homes, Inc.
13 (“Ramsey”) of Bullhead City. In fact, Ramsey had no relationship with MCMILLAN and
14 had no knowledge of or involvement in MCMILLAN’s solicitation of investment funds.

15 c) Investments/loans to Riverside & Associates (“Riverside”) for real property
16 development projects in Bullhead City. Although there were legitimate loans to Riverside
17 in April 1999, MCMILLAN’s investors unknowingly continued to reinvest their principal
18 repayments from Riverside with MCMILLAN after Riverside had fully paid off all of the
19 loans. MCMILLAN told his customers that they could redeposit the principal payment
20 checks with Schooner to continue their Riverside investments, but never provided those
21 principal amounts back to Riverside.

22 9. MCMILLAN opened a credit union account under the name “Schooner”, solely
23 under MCMILLAN’s control and without the knowledge or authorization of Schooner.
24 MCMILLAN instructed his customers to make their checks for their purchases of these securities
25 payable to “Schooner” and deposited these checks in his “Schooner” credit union account.
26

1 MCMILLAN paid monthly principal and/or interest payments to some investors on their non-
2 existent investments.

3 10. At least 21 investors, mostly Arizona residents, lost approximately \$2,600,000.00 in
4 MCMILLAN's unauthorized and fraudulent securities.

5 11. These sales of securities were not recorded on the records of the dealer with whom
6 MCMILLAN was registered at the time of the transactions.

7 12. In or around October 2005, after receiving several inquiries from concerned
8 customers regarding their lack of documentation relating to their investments, MCMILLAN
9 abandoned his customers and investors and failed to report to work. Several customers complained
10 to Schooner and Geneos about their investments with MCMILLAN. Upon discovering his
11 misconduct, Geneos terminated MCMILLAN for cause.

12 IV.

13 VIOLATION OF A.R.S. § 44-1991

14 (Fraud in Connection with the Offer or Sale of Securities)

15 13. In connection with the offer or sale of securities within or from Arizona,
16 MCMILLAN directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made
17 untrue statements of material fact or omitted to state material facts which were necessary in order to
18 make the statements made not misleading in light of the circumstances under which they were
19 made; or (iii) engaged in transactions, practices or courses of business which operated or would
20 operate as a fraud or deceit upon offerees and investors. MCMILLAN's conduct includes, but is not
21 limited to, the following:

22 a) Misrepresenting the use of customers' investment funds;

23 b) Misrepresenting and/or failing to disclose the nature of the purported
24 investments;

25 c) Failing to disclose risks of the purported investments;

26 d) Engaging in unauthorized transactions in customers' accounts; and

1 e) Misappropriating and/or converting investment funds.

2 14. This conduct violates A.R.S. § 44-1991.

3 **V.**

4 **REMEDIES PURSUANT TO A.R.S. § 44-1962**

5 **(Denial, Revocation or Suspension of Registration of Salesman; Restitution, Penalties, or other**
6 **Affirmative Action)**

7 15. MCMILLAN's conduct is grounds to revoke MCMILLAN's registration as a
8 securities salesman with the Commission pursuant to A.R.S. § 44-1962. Specifically, MCMILLAN:

9 a) Has violated A.R.S. § 44-1991, within the meaning of A.R.S. § 44-
10 1962(A)(2);

11 b) Has engaged in dishonest or unethical practices in the securities industry,
12 pursuant to A.R.S. § 44-1962(A)(10), including:

13 (i) Executing transactions on behalf of customers without authority to do so,
14 pursuant to A.A.C. Rule R14-4-130(A)(6);

15 (ii) Employing, in connection with the purchase or sale of a security, a
16 manipulative or deceptive device or contrivance, pursuant to A.A.C. Rule
17 R14-4-130(A)(14); and

18 (iii) Making unauthorized use of securities or funds of customers, pursuant to
19 A.A.C. Rule R14-4-130(A)(16).

20 c) Has engaged in dishonest or unethical practices in business or financial
21 matters, pursuant to A.R.S. § 44-1962(A)(12), including misappropriating customer funds.

22 **VI.**

23 **REQUESTED RELIEF**

24 The Division requests that the Commission grant the following relief:

25 1. Order MCMILLAN to permanently cease and desist from violating the Securities
26 Act, pursuant to A.R.S. §§ 44-2032 and 44-1962;

2. Order MCMILLAN to take affirmative action to correct the conditions resulting from his acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. §§ 44-2032 and 44-1962;

3. Order MCMILLAN to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order MCMILLAN to pay the state of Arizona administrative penalties, pursuant to A.R.S. § 44-1962;

5. Order the revocation of MCMILLAN's registration as a securities salesman pursuant to A.R.S. § 44-1962; and

6. Order any other relief that the Commission deems appropriate.

VII.

HEARING OPPORTUNITY

RESPONDENT and/or Respondent Spouse may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If Respondent or Respondent Spouse requests a hearing, such respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, Executive Assistant to the Executive Director, voice phone number 602/542-3931, e-mail lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

VIII.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, such respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. A Docket Control cover sheet must accompany the Answer. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

Additionally, the respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Pamela T. Johnson.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of respondent or respondent's attorneys. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When a respondent intends in good faith to deny only a part or a qualification of an allegation, such respondent shall specify that part or qualification of the allegation and shall admit

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...

1 the remainder. A respondent waives any affirmative defense not raised in the answer.

2 The officer presiding over the hearing may grant relief from the requirement to file an
3 Answer for good cause shown.

4 Dated this 5th day of April, 2006.

6 /s/ Matthew J. Neubert

7 Matthew J. Neubert
8 Director of Securities
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